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ENVIR. APPEALS BOARD

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July 30, 2008

VIA UPS NEXT DAY AIR

U.S. Environmental Protection
Agency
Clerk of the Board
Environmental Appeals Board
Colorado Building
1341 G Street, NW, Suite 600
Washington, D.C. 20005

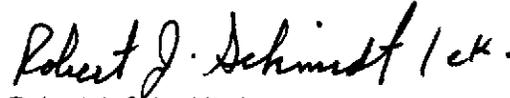
Re: The Dow Chemical Company, Hanging Rock Plant
U.S. EPA ID No. RCRA OHD 039 128 913
Environmental Appeals Board, U.S. EPA, Washington, D.C.

To the Clerk:

Enclosed for filing, please find the original and 5 copies of a *Joint Status Report and Motion For Extension Of Stay* to be filed in the above-referenced matter. Please time-stamp and return the additional copy in the enclosed postage paid envelope.

Please do not hesitate to contact me if you have any questions.

Very truly yours,



Robert J. Schmidt, Jr.

RJS:clk
Enclosures

cc: Kevin Chow (via e-mail)

BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

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IN RE:)
)
THE DOW CHEMICAL COMPANY,)
HANGING ROCK PLANT)
Resource Conservation and Recovery Act (RCRA))
U.S. EPA ID No. RCRA OHD 039 128 913)
)
)
)

Appeal No. RCRA 06-01

JOINT STATUS REPORT
AND MOTION FOR EXTENSION OF STAY

Now come U.S. EPA Region 5 (“U.S. EPA” or “the Region”) and The Dow Chemical Company (“Dow”) (together, “the Parties”), per the Environmental Appeals Board’s Order Extending Stay of June 9, 2008, to provide a status report by July 31, 2008, on the Parties’ efforts to modify the existing RCRA permit issued for The Dow Chemical Company Hanging Rock facility (“Hanging Rock Facility”) to include the modifications proposed by the Parties and thereby resolve this pending permit appeal. The Parties have reached an agreement on all substantive issues and have filed a Joint Status Report with the Board, the Parties’ Petition for Review. The Parties are attempting to appropriate the Board’s resources by fully considering the time and expense of RCRA permit modifications, and also addressing two important new developments since the Parties filed their last status report dated June 2, 2008.

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Previously, the Parties reported that Dow would proceed simultaneously with: (1) a comparable fuels demonstration which would remove the boilers at the facility from the RCRA program entirely, and (2) an application to the Ohio Environmental Protection Agency (“Ohio EPA”) for a state-issued burners and industrial furnaces (“BIF”) permit where the BIF portion of

the federal permit would be terminated upon issuance of the state permit. Since the last status report to the Board, the new owner of the Hanging Rock facility, Americas Styrenics, LLC has continued to make excellent progress toward making the comparable fuels demonstration under 40 CFR § 261.38 that would take the boilers at the facility out of the RCRA program altogether, rendering the federal BIF permit moot. This effort includes testing equipment and the clean closure of the RCRA boilers. Initial testing is complete and the closure of a tank that is used to contain hazardous waste, known as the R-35 tank, is underway. Based on the progress being made by Americas Styrenics on the comparable fuels demonstration, and the results of the initial testing, Ohio EPA has indicated that it does not believe that a final, state-issued BIF permit will be necessary. Since the comparable fuels demonstration, although not complete, appears to be the most likely outcome, Americas Styrenics, in conjunction with Ohio EPA is continuing with the comparable fuels demonstration and clean closure.

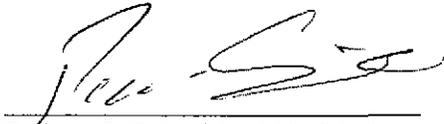
Dow is also in the process of preparing an application for a Class I permit modification to insert "Americas Styrenics" as the name of the permittee in lieu of Dow. The permit modification application is anticipated to be submitted to U.S. EPA in a couple of weeks in conjunction with related filings with Ohio EPA.

The Parties now anticipate that once the comparable fuels demonstration is completed and Ohio EPA issues a certification of clean closure for the affected units, the BIF portion of the federal permit effectively will be rendered moot. This appeal likewise will be rendered moot. The Parties agree that upon Americas Styrenics' receipt of a letter or other formal communication from U.S. EPA stating that U.S. EPA acknowledges that the facility is no longer subject to the BIF portion of the federal permit for the reasons stated above, and inviting Americas Styrenics to submit a proposed permit modification to terminate the BIF portions, Americas Styrenics will

formally withdraw this appeal. Americas Styrenics will subsequently submit a permit modification application, and U.S. EPA will process the permit modification to remove all terms of the permit besides the remaining corrective action requirements. The withdrawal of this appeal will not be dependent upon issuance of the final, modified, corrective action-only, federal permit.

At this point, it appears the earliest time by which the comparable fuels demonstration and clean closure processes will be complete will be September 24, 2008, although unforeseen circumstances may push completion beyond that date. Since Ohio EPA no longer plans to issue a state BIF permit by September 30, 2008, and since Ohio EPA will now have to take time for review and certification of clean closure only after the work by Americas Styrenics is completed, it does not appear that this appeal can be withdrawn prior to September 30, 2008. Ohio EPA will need time to issue its clean closure certifications but it cannot say when that will occur. Under the Board's previous Order, Dow's petition is stayed until September 30, 2008, on which date the Region is currently required to file its response to the petition. As a result of the intervening factors described above, the Parties believe that it is appropriate to continue the stay beyond this date. To account for additional time for Ohio EPA to issue its clean closure certifications and any potential delays in the comparable fuels demonstration, as well as U.S. EPA's formal acknowledgement that the BIF portion of the permit is rendered moot and Dow's formal withdrawal of this appeal, the Parties request the Board to issue an Order extending the stay until November 21, 2008 and requiring a Joint Status Report on or before September 30, 2008, detailing the progress made by the Parties to conclude this appeal.

Respectfully submitted,



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*pursuant to email approval July 30, 2008